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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BURTON v. COMMONWEALTH.

Jan. 14, 1909.

[63 S. E. 464.]

1. Criminal Law (§ 889*)—Verdict—Amendment—Practice.—It is the safer practice to send the jury to their room when it becomes necessary to amend their verdict as to any matter of substance.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 889.*]

2. Criminal Law (§ 889*)—Trial—Amendment of Verdict.—In a trial under an indictment charging accused with having without cause deserted his lawful wife, she being then and there destitute, etc., the verdict found accused guilty of willful desertion without just cause. Thereupon the clerk, by direction of the court, wrote the verdict so as to find accused guilty as charged in the indictment. The jury being polled, each juror responded that the verdict as amended was his verdict. Held, that accused was not prejudiced.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 889.*]

3. Husband and Wife (§ 312*)—Abandonment—Indictment.—Under statute approved March 12, 1904 (Acts 1904, p. 208, c. 111 [Code 1904, § 3795c]), making it a misdemeanor for any person to desert or willfully neglect to provide for the support of his wife or minor children in destitute or necessitous circumstances, the breach of the duty of the husband to support his wife and children may be stated as having occurred either at the moment of the desertion or at any time during the continuance of the willful neglect to provide for them.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 312.*]

4. Husband and Wife (§ 314*)—Abandonment—Instructions.—In a trial under St. March 12, 1904 (Acts 1904, p. 208, c. 111 [Code 1904, § 3795c]), making it a misdemeanor for one to desert or willfully neglect to provide for the support of his wife, etc., an instruction that a quarrel or series of quarrels, for which the wife was responsible, constituted a just cause for desertion, etc., was properly refused.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 314.*]

5. Husband and Wife (§ 314*)—Abandonment—Instructions.—In a trial under St. March 12, 1904 (Acts 1904, p. 208, c. 111 [Code 1904,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

§ 3795c]), making it a misdemeanor for one to desert or willfully neglect to provide for the support of his wife or minor children in destitute or necessitous circumstances, an instruction that if, when accused separated from his wife, she had certain money given her by accused in the bank, and that she now has part of the money and jewels and real estate worth a certain sum, she was not in destitute circumstances, was properly refused; there being no fixed standard as to what constitutes destitute or necessitous circumstances.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 314.*]

6. Husband and Wife (§ 313*)—Abandonment—Sufficiency of Evidence.—In a trial under St. March 12, 1904. (Acts 1904, p. 208, c. 111 [Code 1904, § 3759c]), making it a misdemeanor for one to desert his wife in destitute and necessitous circumstances, evidence held insufficient to show that accused's wife was any time in destitute or necessitous circumstances within the meaning of the statute.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 313.*]

CITY OF RICHMOND *v.* WOOD.

Jan. 14, 1909.

[63 S. E. 449.]

1. Evidence (§ 471*)—Opinions.—Though not an expert, one, in answer to a question whether he had seen anything wherefrom he could say the sewer was too small to carry off the flow of water there, may testify to a physical fact—what he saw on the afternoon of the overflow—indicating that the sewer was too small to carry off the water; an opinion not being called for by the question, or involved in the answer.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2149-2185; Dec. Dig. § 471.*]

2. Damages (§ 146*)—Pleading.—The declaration alleging that a sewer was so choked that it would not carry off the water, and that by reason thereof the water entered on plaintiff's lot with a dwelling thereon, and concluding that plaintiff was otherwise greatly injured and damaged, is broad enough to cover the damage done to all buildings on the lot.

[Ed. Note.—For other cases, see Damages, Dec. Dig. § 146.*]

3. Pleading (§ 317*)—Bill of Particulars of Damage—Necessity of Demand.—Defendant, if not sufficiently advised by the declaration of the particulars of the damage from the overflow complained of,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.